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10/626,041	07/24/2003	Thomas Herrmann	BCR-10002/29	1247

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EXAMINER

RAMIREZ, RAMON O

ART UNIT	PAPER NUMBER
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3632

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/626,041
Filing Date: July 24, 2003
Appellant(s): HERRMANN, THOMAS

John G. Posa
For Appellant

EXAMINER'S ANSWER

MAILED

FEB 16 2006

GROUP 3600

This is in response to the appeal brief filed January 11, 2006 appealing from the Office action mailed August 3, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-3, and 5-12.

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 13 was identified as allowed in the brief.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,379,578	SCHULER	4-1983
3,794,285	BARTS	2-1974

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 1 and 5 stand rejected under 35 U.S.C. 102(b) as being anticipated by Schuler (Pat No 4,379,578). The patent to Schuler discloses a plastic device comprising a lower portion (20) including a continuous ring of material defining an aperture, and a side member (19) extending from said lower portion terminating in a bent lip (18) directly above the aperture capable of hanging a spray bottle coupled thereto. The upper lip surface provides friction a friction force since any surface provides friction unless being made of anti-friction material, which is not the case here.

Claim Rejections - 35 USC § 103

Claims 3, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shuler in view of Barts.

The patent to Barts discloses a bottle holder having a lower end, and upper lip substantially directly above the lower end, and a side member having curved back surface (for example 23). It would have been obvious to one skilled in the art at the time the invention was made to have provided the holder shown by Shuler with a generally curved back as shown by Barts for a variety of reasons; for example, reinforcing, aesthetics, etc.

The upper lip surface provides friction a friction force since any surface provides friction unless being made of anti-friction material, which is not the case here.

Claims 6, 7, 9,10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shuler.

As indicated above, Shuler discloses the device made of plastic. Shuler does not recite the method of making the device. The method of making the device is considered as a matter of expediency having no patentable significance in the instant case. It should be noted, that molding is a very well known those skilled in the art.

(10) Response to Argument

Appellant argues that Schuler does not disclose an aperture *configured* for coupling to a neck of a spray bottle, neither a lip for hanging a bottle coupled thereto. In response to these arguments, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Shuler discloses the structure as recited claimed by claims; and the aperture is capable of coupling to a neck of spray bottle; and further the lip portion is capable of hanging a bottle. Note that the lip portion (18) extends between the side member (19) and the aperture at the distal end from the side member.

Appellant argues that Schuler does not have a surface to enhance friction or holding capability. Again Appellant is relaying on functional language, and as indicated before, the lip plastic surface of Schuler is capable of providing a friction force.

Appellant argues that Barts does not disclose a concave surface but a curved back surface. In this particular case, the use of a concave surface or a generally curved surface as shown by Barts are considered mechanical equivalent. Note that both surfaces provide a space between the side member of the respective devices and the container being held by said devices.

Appellant argues the Office Action fails to address the “molded plastic” limitation and instead refers to the material from which the device is made. The action contains a typographical error; it should be method and not material. The examiner regrets this. As mentioned before, Schuler discloses the device being made of plastic, accordingly the use of plastic to make the instant invention is clearly taught by Schuler. The patent is silent with respect of how the device is being made; however, the method of molding is a very well known those skilled in the art and its use is considered a matter of expediency.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ramon O. Ramirez". The signature is fluid and cursive, with the first name "Ramon" and last name "Ramirez" clearly distinguishable.

Ramon O Ramirez

Primary Examiner

Art Unit 3632

Conferees:

Peter Cuomo 

Robert Olszewski 